

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES G. WILSON,)	
)	
Petitioner,)	
)	
v.)	No. 2:20-cv-00275-JPH-MJD
)	
UNITED STATES PROBATION SYSTEM,)	
BUREAU OF PRISONS,)	
JUDICIAL CONFERENCE OF THE UNITED)	
STATES,)	
CRIMINAL DIVISION OF THE UNITED)	
STATES DEPARTMENT OF JUSTICE,)	
REPRESENTATIVE OF FEDERAL PUBLIC,)	
STATE OF INDIANA,)	
DICK BROWN Warden, Wabash Valley,)	
INDIANA DEPARTMENT OF CORRECTION,)	
)	
Respondents.)	

Order Dismissing Petition for a Writ of Habeas Corpus for Lack of Jurisdiction

Petitioner James G. Wilson is an Indiana prisoner currently incarcerated at Wabash Valley Correctional Facility. For the reasons explained in this Order, Mr. Wilson's petition for a writ of habeas corpus must be **denied** and the action dismissed for lack of jurisdiction.

I. Background

Mr. Wilson was convicted of attempted murder by a jury in 2014 in Marion Superior Court cause number 49G02-1111-FA-080777. On direct appeal, the Indiana Court of Appeals affirmed his conviction and sentence on June 29, 2015. *Wilson v. State*, 37 N.E.3d 562, 2015 WL 3941453 (Ind. Ct. App. June 29, 2015) (unpublished). The Indiana Supreme Court denied transfer on October 5, 2015. Mr. Wilson is currently serving a forty-year sentence for that conviction.

Mr. Wilson has filed for federal habeas relief on several prior occasions. On June 15, 2017, Mr. Wilson filed a petition for a writ of habeas corpus challenging his 2014 conviction. *Wilson v.*

Superintendent, 2:17-cv-0282-JMS-MJD (S.D. Ind.). The action was dismissed with prejudice on March 22, 2018, because it was filed outside the statute of limitations. *See Wilson v. Superintendent*, 2:17-cv-0282-JMS-MJD (S.D. Ind. Mar. 22, 2018). The Court denied Mr. Wilson a certificate of appealability. *Id.*

Mr. Wilson filed two subsequent petitions for habeas relief challenging his 2014 conviction, which were both dismissed for lack of jurisdiction. *See Wilson v. Warden*, 2:18-cv-00418-JMS-DLP (S.D. Ind.), *dk.* 5, and *Wilson v. Warden*, 2:19-cv-00088-JPH-MJD (S.D. Ind.), *dk.* 5.

II. Discussion

In this habeas action, Mr. Wilson again challenges his state court conviction in 49G02-1111-FA-80777. Although he purports to file his petition under 28 U.S.C. § 2255, that statute does not apply to Mr. Wilson because he is incarcerated pursuant to a state conviction rather than a federal conviction. Therefore, the Court treats Mr. Wilson's petition as one brought under 28 U.S.C. § 2254.

When there has already been a decision on the merits in a federal habeas action, to obtain another round of federal review a petitioner requires permission from the Court of Appeals under 28 U.S.C. § 2244(b). *See Altman v. Benik*, 337 F.3d 764, 766 (7th Cir. 2003). This statute, § 2244(b)(3), "creates a 'gatekeeping' mechanism for the consideration of second or successive [habeas] applications in district court." *Felker v. Turpin*, 518 U.S. 651, 657 (1996). "Section 2244(b)(3)(A) is an allocation of subject-matter jurisdiction to the court of appeals. A district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for the filing." *In re Page*, 170 F.3d 659, 661 (7th Cir. 1999) (internal quotation omitted) (emphasis in original).


Mr. Wilson's 2017 petition was dismissed because the statute of limitations had expired. "The dismissal of a suit as untimely is a dismissal on the merits." *Pavlovsky v. VanNatta*, 431 F.3d 1063, 1064 (7th Cir. 2005).

There is no indication that Mr. Wilson has requested or received permission from the Seventh Circuit Court of Appeals to pursue this successive petition. Accordingly, this Court lacks jurisdiction over his petition for a writ of habeas corpus and it is **dismissed for lack of jurisdiction**. Judgment consistent with this Order shall now issue.

Mr. Wilson's motion to proceed *in forma pauperis*, dkt. [2], is **granted**, and his motion for final disposition, dkt. [3], is **denied as moot**.

SO ORDERED.

Date: 6/10/2020


James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

JAMES G. WILSON
139229
WABASH VALLEY - CF
WABASH VALLEY CORRECTIONAL FACILITY - Inmate Mail/Parcels
6908 S. Old US Hwy 41
P.O. Box 1111
CARLISLE, IN 47838